

1 ANDREW A. FORD, ESQ. (SBN 237481)
2 CHRISTOPHER P. HOUSH, ESQ. (SBN 314296)
Moskowitz LLP
3 180 Montgomery Street, Suite 1950
San Francisco, CA 94104
4 Tel: (415) 394-7200
Fax: (415) 398-6501
5 Email: aford@moskowitzllp.com
Email: choush@moskowitzllp.com
6

7 Attorneys for Plaintiff
8 LENNY TRAKHTER and NATALYA MALAKHOVA, individually

9 UNITED STATES DISTRICT COURT

10 NORTHERN DISTRICT OF CALIFORNIA

11 LENNY TRAKHTER and NATALYA
MALAKHOVA

12 Plaintiffs,

13 vs.
14

15 UNITED STATES OF AMERICA

16 Defendant.
17

Civil No.

**COMPLAINT FOR REFUND OF
OVERPAYMENT OF TAXES**

18
19 COME NOW PLAINTIFFS through counsel who is duly admitted to practice before the
20 Court. In support of their Complaint, Plaintiffs state as follows:

21 **INTRODUCTION**

- 22 1. This is a civil action seeking refund from the Internal Revenue Service (“IRS”) of
23 \$160,065.98 for tax year 2008 that was paid by Lenny Trakhter and Natalya
24 Malakhova (“Trakhter”). The civil action is related to errors made by the IRS in an
25 audit of Trakhter’s 2008 tax return as well as a subsequent assessment of penalties for
26 late payment of tax and accuracy related penalties.
27
28

JURISDICTION

2. This Court has jurisdiction pursuant to the following statutes:
 - a. 28 U.S.C. §1346, 28 U.S.C. §1491, 26 U.S.C. §7422 and 26 U.S.C. §704 which provides for judicial review of agency matters.
 - b. 28 U.S.C. §§2201-2202 which provides the district courts with authority to provide declaratory relief under the Declaratory Judgement Act
3. Venue is proper in this district pursuant to 28 U.S.C. §§1391 and 1396. Defendant is the United States, and a substantial part of the events occurred in this judicial district.

FACTS

4. Plaintiff, Lenny Trakhter, social security number xxx-xx-1614 is a citizen of the United States of America. Plaintiff's current mailing address is: 19740 Cottonwood Street, Groveland, CA 95321. Plaintiff, Natalya Malakhova, social security number xxx-xx-7858 is a citizen of the United States of America. Plaintiff's current mailing address is: 19740 Cottonwood Street, Groveland, CA 95321.
5. The IRS is the federal tax collection and administrative agency of Defendant. Plaintiff sues the IRS for the refund of \$160,065.98 for tax year 2008 that was paid by Trakhter, including related interest; and IRS for damages, including the award of reasonable costs and attorneys' fees.
6. Plaintiffs are individuals who filed their 2008 tax return on June 8, 2009. The tax return filed by Plaintiffs indicated a total tax liability of \$8,040.00.
7. On or about July of 2010, the IRS conducted an audit of Plaintiffs' 2008 tax return. In its audit, the Internal Revenue Service concluded that Plaintiffs understated the income from their company (see Exhibit A attached).
8. The IRS determined that Plaintiffs formed a construction company in December of 2007. The IRS went on to assert that Plaintiffs did not keep separate personal and

COMPLAINT

business bank accounts, and that corporate funds were used to pay personal expenses (Exhibit A).

9. In its examination, the IRS claimed Plaintiff underreported gross income and overstated business expenses. As a result, the net income of taxpayer's corporation was increased by \$363,902 (Exhibit A).

10. Missing funds from the corporation were deemed as a constructive dividend distributed to shareholders, which, in this instance, are Plaintiffs (Exhibit A)..

11. The auditor for the IRS conducted a bank deposit analysis for the 2008 tax year, however the auditor's calculations are unclear and nowhere on the calculations does the auditor clarify the increase to net income of \$363,902 (Exhibit A).

12. Additionally, the auditor disregarded and did not take into account the business expenses of Plaintiffs' corporation.

13. As a result of the increase in income of \$363,902, additional tax in the amount of \$82,421 was assessed against taxpayers, as well as a miscellaneous penalty in the amount of \$16,676.60, late payment penalties in the amount of \$20,845.50, a penalty for failure to prepay in the amount of \$215, and interest in the amount of \$39,161.88 (see Exhibit B attached).

14. On April 5, 2018, the IRS erroneously levied and obtained \$160,065.98 from Plaintiffs (Exhibit B).

15. On April 3, 2019, Plaintiffs filed a Request for Audit Reconsideration with the IRS for tax year 2008. (See Exhibit C attached).

16. On or about July 2, 2019 Plaintiffs' counsel contacted the IRS to confirm that the Request for Audit Reconsideration had been received. Plaintiffs' counsel was told that the Request for Audit Reconsideration had not been received. Plaintiffs' counsel

resubmitted the Request for Audit Reconsideration to the IRS for tax year 2008 on Jul3, 2019. (See Exhibit D attached).

17. On February 22, 2020, Plaintiffs filed IRS Form 843 “Claim for Refund and Request for Abatement” for tax year 2008. (See Exhibit E attached).

18. 26 U.S.C. §6511 of the Internal Revenue Code provides that a claim for refund is timely filed if it is filed within three (3) years of the date of the filing of the tax return or within two (2) years of the date of payment of the tax. Since the tax in this instance was paid on April 5, 2018, Plaintiffs have filed this claim in a timely manner.

FIRST CAUSE OF ACTION- CLAIM FOR RELIEF

19. Plaintiffs incorporate the allegations set forth in paragraphs 4 through 18, above as if fully set forth herein.

20. Recovery is sought of the tax assessed, as well as interest and penalties in the amount of \$160,065.98 for tax year 2008.

21. Plaintiffs are individuals who filed their 2008 tax return on June 8, 2009. The tax return filed by Plaintiffs indicated a total tax liability of \$8,040.00.

22. On or about July of 2010, the IRS conducted an audit of Plaintiffs’ 2008 tax return. In its audit, the Internal Revenue Service concluded that Plaintiffs understated the income from their company and overstated business expenses. As a result, the net income of taxpayer’s corporation was increased by \$363,902.

23. Missing funds from the corporation were deemed as a constructive dividend distributed to shareholders, which, in this instance, are Plaintiffs.

24. The IRS auditor’s calculations are unclear and nowhere on the calculations does the auditor clarify the increase to net income of \$363,902 (see attached).

COMPLAINT

1 25. The auditor also abused her discretion when she disregarded and did not take into
2 account the business expenses of Plaintiffs' corporation.

3 26. As a result of the increase in income of \$363,902, additional tax in the amount of
4 \$82,421 was assessed against taxpayers, as well as a miscellaneous penalty in the
5 amount of \$16,676.60, late payment penalties in the amount of \$20,845.50, a penalty
6 for failure to prepay in the amount of \$215, and interest in the amount of \$39,161.88.

7 27. According to the transcript provided by the IRS, the IRS erroneously levied and
8 obtained the tax, penalties and interest in full on April 5, 2018.
9

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiffs pray as follows:
12

- 13 A. That the IRS refund the \$160,065.98 for tax year 2008 that was paid by Plaintiffs;
14 B. That the IRS pay interest to Plaintiffs for the time that the IRS held the \$160,065.98;
15 C. That judgement be entered for Plaintiffs against the IRS for damages, including the
16 award of reasonable costs and attorneys' fees; and
17 D. That Plaintiffs be accorded such other, further, or different relief as the case may
18 require and the Court may deem just and proper under the circumstances.
19

20 Dated: 4/3/20

21 By:



22 Andrew A. Ford
23 Christopher P. Housh
24 Moskowitz LLP
25 180 Montgomery Street, Suite 1950
26 San Francisco, CA 94104
27 Tel: (415) 394-7200
28 Fax: (415) 398-6501
Email: aford@moskowitzllp.com
Email: choush@moskowitzllp.com

Counsel for Lenny Trakhter and Natalya Malakhova

COMPLAINT